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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,018	02/10/2004	Robert Lievestro	VER-178XX	9076
207	7590	03/01/2006	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 03/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/776,018

Applicant(s)

LIEVESTRO ET AL.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-14, 16, 17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14, 16, 17, 19, 20 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 21-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Applicant's request for reconsideration of the non-final rejection of the last Office action with regards to the Applicant's priority date of February 10, 2003 is persuasive and, therefore, the rejection is withdrawn in view of the newly discovered reference(s) to 3,987,507 to Hall. The indicated allowability of claim 18 is also withdrawn in view of the newly discovered reference(s) to 3,987,507 to Hall. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 7, 10, 16, 20-21, 23-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Dependent claims 20, 23, and 25-26 conflict with claim 24 because the Applicant recites "vehicle, vessel or aircraft" wherein claim 24 recites "in particular aircraft". It is unclear how the claim is directed to a vehicle, vessel, and an aircraft.

Claim 21 and 4, trademarks should not be used in claims. Applicant should amend the claims to read hook and loop. In Addition, the Applicant should amend the specification so that VELCRO is in all caps (VELCRO) followed by (TM) and accompanied by generic term (hook and loop). VELCRO should also be an adjective and not a noun.

Claims 7 and 21, it is unclear of the Applicant's use of the term "preferably" thus is the second cover required to be fire retardant, and is it required to contain glass fiber.

Claim 10 appears to conflict with claim 4 because it is unclear how the VELCRO connects the first and second foam bodies yet only the cover appears to connect them.

Claim 16 and 21, it is unclear what is required in the Applicant's recitation "lower than 0.1 g/cubic cm or 0.012 g/cubic cm".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-14, 19-20, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,850,645 to Ogawa et al in view of U.S. Pat. No. 3,987,507 to Hall, and U.S. Pat. No. 4,690,859 to Porter et al.

Claims 24-26, Ogawa discloses a vehicle seat cushion, provided with:

- a first foam body 6;
- a second foam body 12 extending below the first foam body;
- detachable connecting means (11a, 11b, 14a, 14b) to connect the first foam body to the second foam body; wherein the first foam body is provided with a covering which is fixedly connected to the first foam body (col. 7 lines 40-46). Ogawa fails to disclose a foam material received in a cavity between the first and second foam body. Hall discloses a foam body (19'-21') received in a cavity between a first and second body (16, 17). It would have been obvious for one having ordinary skill in the art at the time of

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the invention to have a foam body received between the first and second foam bodies as taught by Hall in order to distribute pressure away from pressure points of the body while upon the cushion of Ogawa. Ogawa fails to disclose the foam material being fire retardant. Porter discloses treating underlying cushioning materials of a seat (col. 4 lines 1-3). It would have been obvious to treat the underlying materials as taught by Porter in order to provide a seat that is fire retardant. With regards to the Applicant's recitation "for an aircraft seat", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 2, Ogawa discloses that the covering is connected to at least an upper surface of the first foam body.

Claim 3, Ogawa discloses that the covering is glued to a base material of the first foam body (col. 7 lines 47-50).

Claim 4, Ogawa discloses that the first and second foam body are detachably connected to each other by hook and loop connections (col. 5 lines 53-58).

Claims 5-6, Ogawa discloses all of the Applicant's claimed limitations except for the covering comprising a fire-retardant material, such as glass fiber. Porter discloses breathable glass fiber fabrics for ticking and upholstery. It would have been obvious for

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one having ordinary skill in the art at the time of the invention to employ a glass fiber material as taught by Porter in order to provide an effective fire barrier (Porter, Abstract).

Claim 7, Ogawa discloses that the second foam body is also provided with a covering (4,5). Ogawa fails to disclose a fire-retardant material, such as glass fiber. Porter discloses breathable glass fiber fabrics for ticking and upholstery. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a glass fiber material as taught by Porter in order to provide an effective fire barrier.

Claim 8, Ogawa discloses that the seat cushion is arranged to be placed on a seat apparatus, in particular a seat (col. 1 lines 1-2). Automobile seats are inherently detachable from the seat apparatus therefore the seat is detachably placed.

Claim 9, Ogawa discloses that the covering is provided with at least a part of the said detachable connecting means (11a,11b) since the cover is integrally connected to the first foam body.

Claim 10, Ogawa discloses that the first and second foam body are detachably connectable to each other only via the integral covering.

Claim 11, Ogawa discloses that the second foam body is arranged, near respective bottom edges to be detachably connected to the covering.

Claim 12, Ogawa discloses that the covering is provided with an upper covering part 3, a lower covering part (4,5) extending opposite it, and side flaps (8,9) extending between the upper and lower covering part.

Claim 13, Ogawa discloses that the covering and the upper foam body bound an inner space in which the second foam body is receivable (fig. 1a).

Claim 14, Ogawa discloses that the lower covering part is provided with an opening offering access to the said inner space (fig. 1a).

Claim 19, Ogawa discloses that in particular a chair, more in particular a seat provided with a seat cushion (col. 1 lines 1-2)(Ogawa).

Claim 20, a vehicle, provided with a seat apparatus (col. 1 lines 1-2)(Ogawa).

Regarding claims 19-20, Ogawa, as modified, discloses a vehicle with a seat apparatus provided with a seat cushion of claim 24.

Claim 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,850,645 to Ogawa et al in view of U.S. Pat. No. 3,987,507 to Hall, and U.S. Pat. No. 4,690,859 to Porter et al., and further in view of U.S. Pat. No. 4,294,489 to Anolick et al.

Claims 16-17, Ogawa, as modified, fails to disclose a lightweight fire-retardant material, such as melamine foam having an average density which is lower than approximately 0.1 gram/cm<sup>3</sup> more in particular lower than approximately 0.02 gram/cm<sup>3</sup>. Anolick discloses a lightweight fire-retardant material, such as melamine foam having an average density which is lower than approximately 0.1 gram/cm<sup>3</sup> more in particular lower than approximately 0.02 gram/cm<sup>3</sup> (col. 3 lines 20-23)(col. 6 lines 25-27). It would have been obvious to employ a lightweight melamine fire-retardant material, such

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as melamine foam as taught by Anolick in order to provide an underlying cushioning material that possess a degree of fire retardant.

***Allowable Subject Matter***

Claims 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 2-14, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.




**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC  


  
PATRICIA L. ENGLE  
PRIMARY EXAMINER